No.

IN THE SUPREME COURT OF THE UNITED STATES

JUDANE ANTJUAN BARBER, PETITIONER,

v.

STATE OF FLORIDA, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JUDANE BARBER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2025-1870

[June 18, 2026]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Frank David Ledee, Judge; L.T. Case No. 062024CF008309A88810.

Daniel Eisinger, Public Defender, and Benjamin Paley, Assistant Public Defender, West Palm Beach, for appellant.

James Uthmeier, Attorney General, Tallahassee, and Mary Elizabeth Johnson, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

KLINGENSMITH, SHEPHERD and LOTT, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 6, 2026

JUDANE BARBER, Appellant(s) v. STATE OF FLORIDA, Appellee(s)	**CASE NO. - 4D2025-1870** L.T. No. - 062024CF008309A88810

BY ORDER OF THE COURT:

ORDERED that Appellant's June 30, 2026 "Motion For Rehearing, Written Opinion, & To Certify A Question Of Great Public Importance" is denied.

Served:
Crim App WPB Attorney General
Thomas Dale Cottone
Mary Elizabeth Johnson
Benjamin Paley
Sarah Elizabeth Wood Sandler
Palm Beach Public Defender

KTH

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
4D2025-1870 Filed 08/06/2026
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2025-1870 August 6, 2026

Because such testimony came from a detective who had been working fraud cases for eight years, it is more probable than not that the jury gave more weight to the detective's testimony than they would have if the witness was not a law enforcement officer.

This Court should reverse Mr. Barber's convictions and sentences, and remand for a new trial.

II. THE SIXTH AMENDMENT ENTITLED MR. BARBER TO A TWELVE-PERSON JURY, AND HE DID NOT WAIVE THAT RIGHT.

a. The standard of review is de novo.

This Court reviews constitutional claims de novo. *See A.B. v. Fla. Dep't of Child. & Fam. Servs.*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005) ("The standard of review for the mother's constitutional claim is de novo[,] as this issue involves a question of law.").

b. This issue is properly brought on appeal because Mr. Barber did not waive this issue.

Preliminarily, Mr. Barber did not waive appellate review of this issue, because the trial court did not specifically ask him if he was waving his Sixth Amendment right to a twelve-person jury. *See* T. 252–53; *Johnson v. State*, 994 So. 2d 960, 963–64 (Fla. 2008). Instead, the trial court asked Mr. Barber if he was ok with the jury

that was selected. *See* T. 252–53. For that reason, this issue is proper on appeal.

c. The Sixth Amendment guarantees a defendant a twelve-person jury for all felonies.

Mr. Barber's convictions by a six-person jury violated his Sixth and Fourteenth Amendments right to a twelve-person jury. *See* amend. VI, U.S. Const.; amend. XIV, U.S. Const.[2]

Previously, this Court has refused to rule on this issue because it is bound by Supreme Court precedent. *See Guzman v. State*, 350 So. 3d 72, 73 (Fla. 4th DCA 2022) (holding that this Court has "no authority to overrule . . . precedent from the United States Supreme Court that endorsed the use of a jury with only six members as constitutional" (quoting *Gonzalez v. State*, 982 So. 2d 77, 78 (Fla. 2d DCA 2008))). Nevertheless, Mr. Barber maintains, like Justice Gorsuch, that "Florida does what the Constitution forbids." *See*

[2] The Supreme Court has held that the Sixth Amendment right to a jury trial applies to the states through the Fourteenth Amendment's Due Process Clause. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) ("Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guarantee.").

Cunningham v. Florida, 144 S. Ct. 1287, 1287 (2024) (Gorsuch, J., dissenting from the denial of certiorari). To get the Supreme Court to decide this issue, Mr. Barber must raise it here.

Mr. Barber maintains that the Supreme Court has proven that it can overturn precedent when warranted. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Indeed, the Court will overturn precedent when that precedent is "irreconcilable with not just one, but two[] strands of constitutional precedent well established both before and after the decision." *Ramos v. Louisiana*, 590 U.S. 83, 112 (2020) (Sotomayor, J., concurring). "Moreover, '[t]he force of stare decisis is at its nadir in cases concerning [criminal] procedur[e] rules that implicate fundamental constitutional protections.'" *Id.* at 113 (alterations in original) (quoting *Alleyne v. United States*, 570 U.S. 99, 116 n.5 (2013)). As such, Mr. Barber continues to raise this good-faith argument for a change in the law.

Williams is ripe for being overturned as precedent because it is irreconcilable with decades of Court case law. Both the Florida and United States Constitutions protect the right to a jury trial in criminal cases. *See* amend. VI, U.S. Const. ("In all criminal prosecutions, the

accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."); art. I, § 22, Fla. Const. ("The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.").

Technically speaking, this Court's decision in *Williams* was a total 180 from prior decisions and historical practice. Since antiquity, and contrary to Florida law, the right to a trial by jury has meant a jury consisting of twelve people. *See Khorrami v. Arizona*, 143 S. Ct. 22, 27 (2022) (Gorsuch, J., dissenting from the denial of certiorari) ("For almost all of this Nation's history[,] and centuries before that, the right to [a] trial by jury for serious criminal offenses meant the right to a trial before [twelve] members of the community."). "Acutely concerned with individuals and their liberty, the [F]ramers of our Constitution sought to preserve th[e] right [to a twelve-person jury] for future generations." *Cunningham*, 144 S. Ct. at 1287 (Gorsuch, J., dissenting from the denial of certiorari). The prevalent use of twelve-person juries is not, as the Court held, an "historical accident." *Contra Williams v. Florida*, 399 U.S. 78, 89–90 (1970). *See also Gibson v. State*, 16 Fla. 291, 300 (1877) (holding that historically,

the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); Robert H. Miller, Comment, *Six of One Is Not a Dozen of the Other: A Reexamination of* Williams v. Florida *and the Size of State Criminal Juries*, 146 U. Pa. L. Rev. 621, 633 (1998) (discussing twelve-member juries in ancient Greek and Roman trials (myth and real)); 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769) (stating that juries consisting of twelve people were commonplace in the English common law).

In fact, the Court acknowledged the historic prevalence of the twelve-person jury in *Thompson v. Utah*, 170 U.S. 343, 349–50 (1898). In *Thompson*, the Court considered "whether the jury referred to in the original constitution and in the sixth amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less," and concluded that "[t]his question must be answered in the affirmative." *Id.* at 349. It noted that since the time of the Magna Carta, the word "jury" had been understood to mean a body of twelve. *Id.* at 349–50. Because that understanding had been accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.* at 350. The

Court continued to acknowledge that fact for seventy more years. *See, e.g.*, *Maxwell v. Dow*, 176 U.S. 581, 586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930); *Duncan v. Louisiana*, 391 U.S. 145, 151–152 (1968). "Yet today, a small number of States refuse to honor [that] promise." *Cunningham*, 144 S. Ct. at 1287 (Gorsuch, J., dissenting from the denial of certiorari).

Florida is one of those states. In 1875, Florida amended its constitution to allow its legislature to legalize juries with less than twelve people, in direct contravention of the common law tradition predating the Magna Carta. *See Gibson*, 16 Fla. at 300 (acknowledging that historically the right to a jury trial meant "a jury, according to the common law, to be composed of twelve persons"); *see also id.* ("The number of jurors for the trial of causes in any court may be fixed by law."). The Florida Legislature did so in 1877, enacting chapter 3010, which provided: "[t]welve men shall constitute a jury to try all capital cases, and six men shall constitute a jury to try all other offenses prosecuted by indictment." Ch. 3010, § 6, at 54, Laws of Fla. (1877) (codified at § 913.10, Fla. Stat. (1970)). This was, and still is, in direct violation of the Sixth Amendment.

Interestingly, when the Supreme Court gave Florida approval to continue its draconian practice of using juries with less than twelve people in felony trials, the Court used a mode of constitutional interpretation that contravenes the original meaning of the Sixth Amendment: a functionalist approach. *See Williams*, 399 U.S. at 98–103. Specifically, in *Williams*, the Court reasoned that it could find "no indication in 'the intent of the Framers' of an explicit decision to equate the constitutional and common-law characteristics of the jury." *Id.* at 99. According to the Court, "[t]he relevant inquiry . . . must be the function that the particular feature performs and its relation to the purposes of the jury trial." *Id.* at 99–100. "Measured by th[at] standard," the Court held, "the [twelve-person jury] requirement [for felony trials] cannot be regarded as an indispensable component of the Sixth Amendment," because "neither currently available evidence nor theory suggests that the [twelve-person] jury is necessarily more advantageous to the defendant than a jury composed of fewer members." *Id.* at 100–02 (footnotes omitted).

Continuing down this dark road of functionalism, the Court decided *Apodaca v. Oregon*, 406 U.S. 404 (1972). There, the Court held that non-unanimous jury verdicts in state criminal trials

comported with the Sixth Amendment. *Id.* at 406. "Justice White, writing for the plurality, applied a *Williams*-style inquiry focusing upon 'the function served by the jury in contemporary society' and concluded that the requirement of unanimity was not 'of constitutional stature.'" *Guzman*, 350 So. 3d at 76 (Gross, J., concurring specially) (quoting *Apodaca*, 406 U.S. at 406, 410).

But then, in *Ramos*, the tide changed: the light of originalism began to peak out from the darkness of functionalism. The Supreme Court held that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the time of the Sixth Amendment's adoption." *Ramos*, 590 U.S. at 90. The Court wrote that the functionalist analysis relied on in *Apodaca* was flawed, and held that a non-unanimous jury verdict did not comport with the Sixth Amendment's guarantees. *Id.* at 93, 100, 106.

Judge Gross, in a special concurrence in *Guzman*, noted that although the Supreme Court never explicitly questioned the *Williams* decision in *Ramos*, the Court's functionalist reasoning in *Williams* is on shaky ground because of the Court's decision in *Ramos*. *See Guzman*, 350 So. 3d at 78 (Gross, J., concurring specially) ("It is a stretch to say that *Ramos* 'effectively overruled' *Williams*. Yet, if

applied to the issue of jury size, the originalist analysis in *Ramos* would undercut *Williams*'s functionalist underpinnings.").

Mr. Barber acknowledges that the Supreme Court recently denied review of the same twelve-person jury argument in *Albritton* (No. 23-7272), *Croce* (No. 23-7503), *Rodgers* (23-7521), *Mendezsales* (23-7588), *Davis* (23-7685), *Mantecon* (24-5113), *Terrell* (24-5284), and *Valle* (24-5431). Nevertheless, Mr. Barber maintains that the Court's ruling in *Williams* is impossible to square with the Court's ruling in *Ramos*.

d. Because the Sixth Amendment entitled Mr. Barber to a twelve-person jury, section 913.10 is unconstitutional.

Because *Williams* was wrongly decided, section 913.10 (which legislatively permits juries of less than twelve people in felony trials) is facially unconstitutional.

"As in all constitutional challenges, [a] statute comes to [this] Court clothed with the presumption of correctness and all reasonable doubts about [a] statute's validity must be resolved in favor of constitutionality." *City of Fort Lauderdale v. Dhar*, 185 So. 3d 1232, 1234 (Fla. 2016). "[T]o overcome the presumption of constitutionality, 'the invalidity must appear beyond reasonable doubt.'" *Planned*

Parenthood of Sw. & Cent. Fla. v. State, 384 So. 3d 67, 77 (Fla. 2024) (quoting *Franklin v. State*, 887 So. 2d 1063, 1073 (Fla. 2004)).

"When courts consider the constitutionality of a statute that abridges a fundamental right, they are required to apply a strict scrutiny standard to determine whether the statute denies equal protection." *Dhar*, 185 So. 3d at 1234. "A fundamental right is one [that] has its source in and is explicitly guaranteed by the federal or Florida Constitution." *State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2004). So "[t]o withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest." *Jackson v. State*, 137 So. 3d 470, 474 (Fla. 4th DCA 2014).

To "abridge" a fundamental right, a government has to "reduce" or "diminish" said right. *See Abridge*, *Black's Law Dictionary* (12th ed. 2024). This indicates that to abridge a fundamental right, a law must limit a person's ability to exercise their constitutional rights. This does not mean, however, that a government can gut that fundamental right. In fact, the only way for a government to gut a fundamental right, according to an originalist interpretation of the Constitution, is through a constitutional amendment, which was not

done here. *See* art. V, U.S. Const.; Antonin Scalia, *The Essential Scalia: On the Constitution, the Courts, and the Rule of Law* 12 (Jeffrey S. Sutton & Edward Whelan eds., 2020) ("Originalists believe that the provisions of the Constitution have a fixed meaning, which does not change (except by constitutional amendment): they mean today what they meant when they were adopted, nothing more and nothing less.").

Here, Mr. Barber suggests that a strict scrutiny analysis would never be met, because section 913.10 does not merely abridge his Sixth Amendment right to a twelve-person jury in a felony trial, it guts that fundamental right entirely.

Nevertheless, even if this Court were to apply strict scrutiny, section 913.10 still fails because there is no compelling government interest. The history behind section 913.10 shows that Florida did not, and still does not, have a compelling government interest in limiting a defendant's Sixth Amendment right to a twelve-person jury in a felony trial, because Florida's reasoning for passing section 913.10 was racist to its very core. *See Wallace v. State*, 768 So. 2d 1247, 1250 (Fla. 1st DCA 2000) ("[R]acism has no place in our system of justice.").

Florida's six-person jury law arose in the Jim Crow-era context of a "deliberate and systematic effort to suppress minority voices in public affairs." *Khorrami*, 143 S. Ct. at 27 (Gorsuch, J., dissenting from the denial of certiorari). Although this is never explicitly stated by the Florida Legislature, historical evidence points in that direction. Namely, during Reconstruction, when federal troops were stationed in Florida, a jury trial in a felony case consisted of twelve people. But approximately one month after federal troops left (at the birth of the Jim Crow-era), Florida changed its laws, permitting a six-person jury to hear and decide a felony case. *See* ch. 3010, § 6, at 54, Laws of Fla. (1877). Thus, the six-person jury first saw light at the birth of the Jim Crow-era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent African Americans from serving as jurors.[3]

[3] In the aftermath of the 1876 presidential election, Reconstruction ended and federal troops withdrew from the South. Jerrell H. Shofner, *Reconstruction and Renewal, 1865–1877*, *in The History of Florida* 260, 273 (Michael Gannon ed., 2018). After January 1877, no federal troops remained in Florida. *Id.*

Because there is no compelling government interest to promoting racism, section 913.10 fails to meet strict scrutiny, and it is facially unconstitutional.

This Court should reverse Mr. Barber's convictions by a six-person jury, and remand for a new trial by a twelve-person jury.